

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-12112JLT

AMIR LASHGARI,
Plaintiff

v.

SEA HUNT, INC.,
TROPICLAND MARINE
AND TACKLE, INC., and
GREGORY ZILBERMAN,
Defendants.

**DEFENDANT SEA HUNT BOATS, INC.'S ANSWER, AFFIRMATIVE
DEFENSES AND CLAIM FOR TRIAL BY JURY**

ANSWER

Defendant Sea Hunt, Inc., whose proper name is Sea Hunt Boats, Inc. (hereinafter "Sea Hunt") responds to the allegations of the Complaint, paragraph by paragraph, as follows:

Introduction

1. Sea Hunt makes no response to Paragraph 1 because it contains no allegation of material fact, but rather states conclusions of law to which no response is required. To the extent a further response is required, Sea Hunt lacks sufficient knowledge and information upon which to form a belief as to the truth of the assertions of Paragraph 1, and therefore leaves the plaintiff to his proof.

Jurisdiction

2. Sea Hunt makes no response to Paragraph 2 because it contains no allegation of material fact, but rather states a conclusion of law to which no response is required. To the extent

a further response is required, Sea Hunt leaves the plaintiff to his proof.

The Parties

3. Sea Hunt lacks sufficient knowledge and information upon which to form a belief as to the truth of the allegation of Paragraph 3, and therefore leaves the plaintiff to his proof.

4. As to the allegations of Paragraph 4, Sea Hunt admits only that it is a South Carolina corporation and that it has a usual place of business in Lexington, South Carolina. Sea Hunt denies the remaining allegations of Paragraph 4.

5. Sea Hunt lacks sufficient knowledge and information upon which to form a belief as to the truth of the allegations of Paragraph 5, and therefore leaves the plaintiff to his proof.

6. Sea Hunt lacks sufficient knowledge and information upon which to form a belief as to the truth of the allegations of Paragraph 6, and therefore leaves the plaintiff to his proof.

Factual Allegations

7. As to the allegations of Paragraph 7, Sea Hunt admits only that it is engaged in the design and manufacture of boats, and further admits that it designed, manufactured and marketed a boat model called the "Navigator 22." Sea Hunt lacks sufficient knowledge and information upon which to form a belief as to the truth of the remaining allegations of Paragraph 7, and therefore leaves the plaintiff to his proof.

8. Sea Hunt lacks sufficient knowledge and information upon which to form a belief as to the truth of the allegations of Paragraph 8, and therefore leaves the plaintiff to his proof.

9. Sea Hunt lacks sufficient knowledge and information upon which to form a belief as to the truth of the allegations of Paragraph 9, and therefore leaves the plaintiff to his proof.

10. Sea Hunt lacks sufficient knowledge and information upon which to form a

belief as to the truth of the allegations of Paragraph 10, and therefore leaves the plaintiff to his proof.

11. Sea Hunt lacks sufficient knowledge and information upon which to form a belief as to the truth of the allegations of Paragraph 11, and therefore leaves the plaintiff to his proof.

12. Sea Hunt lacks sufficient knowledge and information upon which to form a belief as to the truth of the allegations of Paragraph 12, and therefore leaves the plaintiff to his proof.

13. Sea Hunt lacks sufficient knowledge and information upon in which to form a belief as to the truth of the allegations of Paragraph 13, and therefore leaves the plaintiff to his proof.

COUNT I
(Strict Liability - Defendant Sea Hunt)

14. Sea Hunt hereby incorporates and makes its responses to Paragraphs 1-13 its response to Paragraph 14 as if fully set forth herein.

15. Sea Hunt lacks sufficient knowledge and information upon which to form a belief as to the truth of the allegations of Paragraph 15, and therefore leaves the plaintiff to his proof.

16. Sea Hunt denies the allegations of Paragraph 16.

17. Sea Hunt denies the allegations of Paragraph 17.

18. Sea Hunt denies the allegations of Paragraph 18.

Request for Relief

1-2. Sea Hunt denies that the plaintiff is entitled to the relief requested and moves the Court to dismiss the Complaint.

WHEREFORE, Sea Hunt respectfully moves the Court to dismiss this count of the Complaint, to enter judgment in favor of Sea Hunt, to afford the plaintiff no relief and to award Sea Hunt its taxable expenses and costs fees.

COUNT II
(Negligence Defendant Sea Hunt)

19. Sea Hunt hereby incorporates and makes its responses to Paragraphs 1-18 its response to Paragraph 19 as if fully set forth herein.

20. Sea Hunt makes no response to Paragraph 20 because it does not allege material facts but rather states conclusions of law to which no response is required. To the extent that a response is required, Sea Hunt denies that the Navigator 22 was defective, denies liability to plaintiff and otherwise leaves the plaintiff to his proof.

21. Sea Hunt denies the allegations of Paragraph 21.

22. Sea Hunt denies the allegations of Paragraph 22.

Request for Relief

1-2. Sea Hunt denies that the plaintiff is entitled to the relief requested and moves the Court to dismiss the Complaint.

WHEREFORE, Sea Hunt respectfully moves the Court to dismiss this count of the Complaint, to enter judgment in favor of Sea Hunt, to afford the plaintiff no relief and to award Sea Hunt its taxable expenses and costs fees.

COUNT III
(Breach Of Express Warranty - Defendant Sea Hunt)

23. Sea Hunt hereby incorporates and makes its responses to Paragraphs 1-22 its response to Paragraph 23 as if fully set forth herein.

24. Sea Hunt denies the allegations of Paragraph 24.

25. Sea Hunt denies the allegations of Paragraph 25.

26. Sea Hunt denies the allegations of Paragraph 26.

Request for Relief

1-2. Sea Hunt denies that the plaintiff is entitled to the relief requested and moves the Court to dismiss the Complaint.

WHEREFORE, Sea Hunt respectfully moves the Court to dismiss this count of the Complaint, to enter judgment in favor of Sea Hunt, to afford the plaintiff no relief and to award Sea Hunt its taxable expenses and costs fees.

COUNT IV

(Strict Liability - Defendant Tropicland Marine and Tackle)

27. Sea Hunt hereby incorporates and makes its responses to Paragraphs 1-26 its response to Paragraph 27 as if fully set forth herein.

28. The allegations of Paragraph 28 are addressed to another party and therefore no response is required of Sea Hunt. To the extent that a response is required, Sea Hunt lacks sufficient knowledge and information upon which to form a belief as to the truth of the allegations of Paragraph 28, and therefore leaves the plaintiff to his proof.

29. The allegations of Paragraph 29 are addressed to another party and therefore no response is required of Sea Hunt. To the extent that a response is required, Sea Hunt denies the allegations of Paragraph 29.

30. The allegations of Paragraph 30 are addressed to another party and therefore no response is required of Sea Hunt. To the extent that a response is required, Sea Hunt denies the allegations of Paragraph 30.

31. The allegations of Paragraph 31 refer to another party and therefore no response is required of this Defendant.

Request for Relief

1-2. The Requests for Relief pertain to another Defendant and therefore Sea Hunt makes no response to these requests.

COUNT V

(Negligence - Defendant Tropicland Marine and Tackle)

32. Sea Hunt hereby incorporates and makes its responses to Paragraphs 1-31 its response to Paragraph 32 as if fully set forth herein.

33. The allegations of Paragraphs 33 refer to another party and therefore no response is required of Sea Hunt.

34. The allegations of Paragraphs 34 refer to another party and therefore no response is required of Sea Hunt.

39[sic]. The allegations of Paragraphs 39 refer to another party and therefore no response is required of Sea Hunt.

Request for Relief

1-2. The Requests for Relief pertain to another Defendant and therefore Sea Hunt makes no response to these requests.

COUNT VI

(Negligence - Wrongful Death - Defendant Zilberman)

40. Sea Hunt hereby incorporates and makes its responses to Paragraphs 1-39 its response to Paragraph 40 as if fully set forth herein.

41. The allegations of Paragraphs 41 refer to another party and therefore no response is

required of Sea Hunt.

42. The allegations of Paragraphs 42 refer to another party and therefore no response is required of Sea Hunt.

43. The allegations of Paragraphs 43 refer to another party and therefore no response is required of Sea Hunt.

REQUEST FOR RELIEF

1-2. The Requests for Relief pertain to another Defendant and therefore Sea Hunt makes no response to these requests.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Complaint does not state a claim against Sea Hunt upon which relief can be granted.

SECOND DEFENSE

The Complaint does not state a claim against Sea Hunt upon which relief can be granted because Sea Hunt is not liable to pay the plaintiff any amount of damages claimed.

THIRD DEFENSE

If the plaintiff suffered injury or damage, as alleged, such injuries or damage were caused by someone for whose conduct Sea Hunt was not and is not legally responsible.

FOURTH DEFENSE

Plaintiff's negligence was greater than the alleged negligence of Sea Hunt and such negligence contributed substantially to his alleged accident and injury. Therefore, the plaintiff is barred from recovery under M.G.L. c. 231 §85.

FIFTH DEFENSE

Plaintiff was guilty of contributory negligence which was a substantial factor in causing his alleged accident and injury. Therefore, any damages recovered from Sea Hunt should be reduced in proportion to the plaintiff's negligence in accordance with M.G.L. c. 231 §85.

SIXTH DEFENSE

Any express warranty which the plaintiff alleges was breached by Sea Hunt was excluded by Sea Hunt and/or was never made to the plaintiff.

SEVENTH DEFENSE

The plaintiff did not rely on any express warranty made by Sea Hunt to his detriment.

EIGHTH DEFENSE

By way of affirmative defense, Sea Hunt states that if the plaintiff proves that he was injured or suffered loss as alleged, said damages were caused by an intervening or superseding act for which Sea Hunt is not liable.

NINTH DEFENSE

By way of affirmative defense, Sea Hunt states that the plaintiff's accident and injury was caused by a force of nature, and therefore Sea Hunt is not liable.

TENTH DEFENSE

The plaintiff failed to mitigate his alleged damages and losses.

JURY CLAIM

Defendant Sea Hunt Boats, Inc. demands a trial by jury on all issues alleged in the Complaint and on all affirmative defenses.

The Defendant,
SEA HUNT BOATS, INC.
By its attorneys,

/s/ William P. Breen, Jr.

William P. Breen, Jr., Esq., BBO # 558768

Rebecca L. Andrews, Esq., BBO #644846

MURPHY, HESSE, TOOMEY & LEHANE, LLP

300 Crown Colony Drive, Suite 410

Quincy, MA 02169

(617) 479-5000

Dated: March 3, 2005

CERTIFICATION OF SERVICE

The undersigned attorney hereby certifies that on this 3rd day of March 2005, he served a copy of the foregoing document, via electronic filing, upon the following:

David B. Kaplan, Esq.
88 Black Falcon Avenue, Suite 301
Boston, MA 02210

/s/ William P. Breen, Jr.
William P. Breen, Jr.